Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1768

JOSEPH S. WARD, *Appellant*

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, Composed of Its President, GUILLERMO CRUZ GONZALEZ; Its Vice-President, JUAN M. PORTELA SOLER; and Associate Members PEDRO SANTIAGO RIVERA, MILTON CASTRO, GUSTAVO PADILLA, and GENARO NEGRON, *Appellee*

On Appeal from the United States District Court for the District of Puerto Rico

(Three-Judge Court)

JURISDICTIONAL STATEMENT

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BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, Composed of Its President, GUILLERMO CRUZ GONZALEZ; Its Vice-President, JUAN M. PORTELA SOLER; and Associate Members PEDRO SANTIAGO RIVERA, MILTON CASTRO, GUSTAVO PADILLA, and GENARO NEGRON, *Appellee*

On Appeal from the United States District Court for the District of Puerto Rico

(Three-Judge Court)

JURISDICTIONAL STATEMENT

TO THE HONORABLE COURT:

Appellant takes this appeal from the Judgment of the United States District Court for the District of Puerto Rico, entered on March 8, 1976, declaring that section 689 of 20 Laws of Puerto Rico Annotated,

insofar as it imposes a requirement of actual residency does not offend the equal protection clause of the Fourteenth Amendment.

OPINION BELOW

The Opinion of the District Court for the District of Puerto Rico is not yet reported. Copies of the Opinion and Judgment are attached hereto. (Appendices C and D).

JURISDICTION

This suit is brought under 28 U.S.C.A. 1253 to redress the alleged deprivation of appellant's constitutional rights. Three-Judge Court was convened pursuant to 28 U.S.C. 2281. The judgment of the District Court was entered on March 8, 1976, based on the Opinion dated February 12, 1976, and Notice of Appeal dated February 28, 1976 was filed on March 2, 1976. (Appendices C, D, and E). The jurisdiction of this Honorable Court to review the judgment is conferred by Title 28, United States Code, Section 1253. *Calero Toledo* v. *Pearson Yacht Leasing Co.,* 416 U.S. 663, 94 S.Ct. 2080, 40 L.Ed.2d 452, *reh. den.* 417 U.S. 977, 94 S.Ct. 3187, 41 L.Ed.2d 1148.

STATUTES INVOLVED

The statute, 20 L.P.R.A. § 689, can be found at Appendix F, and is officially reported at pages 226 to 228 of the 1973 Supplement to Volume 4A of the Laws of Puerto Rico Annotated.

STATEMENT

The appellant is a resident of the State of New Jersey, who desires to be licensed in Puerto Rico as an Engineer. The Appellee, the Members of the Board

of Examiners of Engineers, Architects and Surveyors of the Commonwealth of Puerto Rico are charged with the task of passing upon the qualifications of those seeking such a license, but have not examined the appellant because of his failure to comply with the statutory residence requirement for licensure. 20 L.P.R.A. § 689. This statute requires residence in the Commonwealth of Puerto Rico for one year prior to the filing of an application for licensing. A Three-Judge Court was convened to consider appellant's contention in this case that the statute should be enjoined as unconstitutional.

That on July 15, 1975 the Three-Judge Court declared the statute unconstitutional by rendering an Opinion and Partial Judgment where it declared unconstitutional the duration residence requirement of one year on the ground that it was in conflict with the Equal Protection Clause of the Fourteenth Amendment of the Federal Constitution. (*Ward* v. *Board of Examiners,* Civ. No. 159-73 (D. P. R. July 15, 1975).)

Before the former decision was rendered, the appellee contended that the statute 20 L.P.R.A. § 689 imposed not one, but two residency requirements. The first is an actual, bona fide residency in Puerto Rico, and the second, the durational, one year requirement. In regard to this contention the Three-Judge Court held in favor of the appellee and said in its Opinion filed and entered on February 12, 1976:

> "The residency requirement assists the Board of Examiners, which is composed of active professionals and which operates on a limited budget, to efficiently pass upon the ability and moral character of an applicant. Several courts have sustained actual residency requirements for admission to the

bar on similar reasoning. *Lipman* v. *Van Zant*, — F. Supp. 391, 403 (N. D. Miss. 1971); *Webster* v. *Wofford*, 321 F. Supp. 1259, 1262 (N. D. Ga. 1970). While, as the Colegio concedes, sufficient information about an applicant might be forthcoming from mail and telephone inquiries, we cannot say that residency does not serve a rational state purpose in evaluating the applications for engineers' licenses. Consequently, 20 L.P.R.A. 689, insofar as it imposes a requirement of actual residency does not offend the equal protection clause of the Fourteenth Amendment."

QUESTIONS PRESENTED

In this appeal are raised the following substantial constitutional questions relating to the power of the Legislature of Puerto Rico to require an actual, bona fide residence in Puerto Rico, as a condition to practice the profession of Engineer:

1. WHETHER such a requirement violates the Due Process and Equal Protection Clause of the Fifth, or the Fourteenth Amendments of the Federal Constitution.

2. WHETHER such a statutory provision is in conflict with paragraph 1 of Section 2 of Article IV of the Constitution of the United States, which provides that citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

3. WHETHER such a requirement is in conflict with Article II of the Federal Relations Act, which states:

> "The rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of Section 2 of Article IV of the Constitution of the United States.

THESE QUESTIONS ARE SUBSTANTIAL

Summary of Argument

In these questions the appellant contends that the residence requirement imposed by the law of Puerto Rico in regard to the durational residence, and the bona fide residence in Puerto Rico in order to practice the profession of Engineer, cannot be distinguished from a constitutional point of view.

This Court should note probable jurisdiction, and decides the questions presented because they have never been decided by this Court.

A. The Court below erred in holding that an actual, bona fide residence requirement in Puerto Rico is not in conflict with the Due Process and Equal Protection Clause of the Fifth or the Fourteenth Amendment of the Federal Constitution, because said residence requirement assists the Board of Examiners, which is composed of active professionals, and which operates on a limited budget, to efficiently pass upon the ability and moral character of an applicant.

Because of this fact, the Court held that the residence requirement *has a rational state purpose in evaluating the applications for engineers licenses, and therefore said requirement is constitutional.*

The appellant on the other hand sustains that there are other means than actual, bona fide residence for the Examining Board to obtain information regarding the character, ability, and scientific preparation of the applicants, besides the information obtained from mail

and telephone inquiries. The Examining Board can obtain the information it acquired from the mere residency of the applicants in Puerto Rico by appointing investigators paid by the applicants to obtain said information. In other words, it is not necessary that the applicants should reside in Puerto Rico for the Board to obtain all the information necessary for it to determine whether the applicant is capable or able for acceptance by the Board, and thus grant him the license to practice the profession of Engineering in Puerto Rico.

For these reasons, the requirement of an actual, bona fide residency in Puerto Rico is arbitrary and unreasonable, as stated by the Supreme Court of Florida in the case of *Mercer* v. *Hemmings,* 194 So. 2d 579 (Florida 1967). In this case a statute of Florida requiring an applicant to practice in Florida the profession of Accountant, two years of residency before taking the examinations, was declared unconstitutional by the Florida Supreme Court. The Court said:

> *"The regulation of the profession of accounting is an exercise of the police power, for the benefit and protection of the public and is not intended as economic protection for the profession from prospective competitors. Little, if any, reason can be found for requiring a certified public accountant of another state to cease his profession, close his office, and bask in the Florida sunshine for a period of two years before taking the examination. Successful and worthy persons in other states, the kind of citizens we want in Florida, are from a practical standpoint banned from ever becoming Florida Certified Public Accountants."* Id. 583. 5874."
>
> *(Emphasis supplied)*

B and C. The Court below erred in holding that an actual bona fide residence requirement is not in conflict with paragraph 1 of Section 2 of Article IV of the Constitution of the United States, which provides that citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; and Article II of the Federal Relations Act of 1950, which states:

> "The rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of Section 2 of Article IV of the Constitution of the United States."

There is no question that a State, under the Police Power, can require examinations as a condition for the practice of a profession. But the State cannot require that in order to take such examinations, the applicant must be an actual, bona fide resident of the Commonwealth of Puerto Rico. This requirement constitutes a violation of the following constitutional provisions: paragraph 1 of Section 2 of Article IV of the Constitution of the United States, and Article II of the Federal Relations Act previously mentioned.

In the case of *Blake* v. *McClung,* 172 U. S. pages 239, 251 (1898), when interpreting Article IV, Section 2 of the Constitution of the United States, which provides that the Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, said:

> "Ward v. Maryland, 12 Wall. 418, 430, involved the validity of a statute of Maryland requiring all traders, not being permanent residents of the State, to take out licenses for the sale of goods,

wares or merchandise in Maryland, other than agricultural products and articles there manufactured. This court said: "Attempt will not be made to define the words 'privileges and immunities,' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly *and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire personal property, to take and hold real estate, to maintain actions in the courts of the State, and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens. Comprehensive as the power of the State is to lay and collect taxes and excises, it is nevertheless clear, in the judgment of the court,* that the power cannot be exercised to any extent in a manner forbidden by the Constitution; and inasmuch as the Constitution provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, it follows that the defendant might lawfully sell, or offer or expose for sale, within the district described in the indictment, any goods which the permanent residents of the State might sell, or offer or expose for sale in that district, without being subjected to any higher tax or excise than that exacted by law of such permanent residents."

(Emphasis supplied)

As the science of engineering is a universal one, and therefore, no local knowledge or condition is necessary for its practice, it constitutes a molestation according to the doctrine in the case of *Blake* v. *McLung, supra,*

and therefore, a violation of the rights and privileges of a citizen of another State if the laws of Puerto Rico require residence or domicile to a citizen of another State to practice said profession in Puerto Rico.

The situation in appellant's case is not that of a law of a State, which requires residence to a citizen of another State as a condition to vote, hold office, practice law, (See *Chambers Bros.* v. *Joseph Church & Co.,* 14 R.I. 398, 51 Am. Rep. 410 (1884); act as an insurance agent, (See *LaTourette* v. *McMaster,* 248 U.S. 465, 39 S.Ct. 160, — L.Ed. 362 (1919)). See also *Corwin,* "THE CONSTITUTION AND WHAT IT MEANS TODAY", Princeton University Press, 1973 Edition, pages 208 to 210.

IN SUMMARY, the law of Puerto Rico, requiring permanent residence in the Island in order to practice the science of engineering, is clearly unconstitutional in the light of the constitutional provisions already cited, as well as in the light of the constitutional doctrine of travel from one State to another. See *Blake* v. *McLung, supra.* The right of travel is recognized by the case of *Ward* v. *Maryland,* cited in *Blake* v. *McLung, supra,* in relation to the exercise of the rights guaranteed by paragraph 1 of Section 2 of Article IV of the Constitution of the United States.

There is no State interest which justifies the Government of Puerto Rico to require permanent residence in Puerto Rico to a citizen of another State to practice the profession of engineering in the Island. The only argument that can be invoked in favor of such requirement is that to protect local engineers from competition of engineers of other countries and States of the Union.

Such an argument was rejected by the lower Court, in appellant's case, in his Opinion dated July 14, 1975, where the Court said:

> "Discrimination to protect one segment of the population against competition for jobs with another group is not in itself a constitutionally permissible objective, and thus defendants' argument that the durational residence requirement is necessary to prevent high unemployment from becoming even more serious is unavailing. Flores de Otero v. Examining Board, supra; In re Griffiths, 413 U.S. 717, 722, n. 8 (1973)."
>
> *(Emphasis supplied)*

CONCLUSION

For the stated reasons, we submit that the questions presented are so substantial as to require plenary considerations, with briefs on the merits and oral argument, for their resolution.

San Juan, Puerto Rico, this 20th day of May, 1976.

Respectfully submitted,

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Río Piedras, Puerto Rico 00931

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Civil No. 159-73

JOSEPH S. WARD,
Plaintiff

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, ET AL.,
Defendants.

Partial Judgment and Order

(filed and entered July 15, 1975)

This case having come for a hearing before a Three-Judge Court, Judges Coffin, Toledo and Pesquera sitting, and the issues having been heard and the opinion of the Court having been duly rendered,

It is ORDERED, ADJUDGED and DECREED that Section 689 of Title 20, Laws of Puerto Rico Annotated, is unconstitutional, void and unenforceable to the extent that it establishes a durational residence requirement of one year for those seeking to be licensed as engineers by defendants; and

It is ORDERED, ADJUDGED and DECREED that defendants consider any application for licensing filed by plaintiff Joseph S. Ward without regard to his failure to fulfill the requirement of one year's durational residence contained in Section 689 of Title 20; and

It is ORDERED, ADJUDGED and DECREED that defendants are enjoined from enforcing the durational residence requirement of Section 689; and

It is further ORDERED that this case will stand for further proceedings as directed in the opinion rendered by the Court.

San Juan, Puerto Rico, July 14, 1975.

/s/ FRANK M. COFFIN
Frank M. Coffin
U. S. Circuit Judge

/s/ JOSE V. TOLEDO
José V. Toledo
U. S. District Judge

/s/ HERNAN G. PESQUERA
Hernán G. Pesquera
U. S. District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

No. 159-73

Opinion

COFFIN, *Circuit Judge*. Plaintiff is a resident of New Jersey who desires to be licensed in Puerto Rico as an engineer. Defendants, the members of the Board of Examiners charged with the task of passing upon the qualifications of those seeking such a license, have not examined him because of his failure to comply with the statute requiring residence in the Commonwealth for one year prior to the filing of an application for licensing. 20 L. P. R. A. § 689. This three-judge court was convened to consider plaintiff's contentions that the statute should be enjoined as unconstitutional.

We turn first to the procedural preliminaries. Jurisdiction is based upon 42 U.S.C. § 1983 and 28 U.S.C. § 1343. *Ortiz* v. *Hernández Colon*, 511 F.2d 1080 (1st Cir. 1975);

Flores de Otero v. *Examining Board*, —F. Supp.— (D.P.R. Dec. 19, 1974), *prob. juris. noted*, 43 U.S.L.W. 3624 (U.S. May 27, 1975). Defendants argue that this court lacks jurisdiction because no case or controversy is presented, but we find this contention to be insubstantial. It is true that the record does not establish that plaintiff complied with all the filing requirements immediately before commencing this action in early 1973. He had, however, applied for a license in 1967 and been refused it on the ground of non-residence. In late 1972 he once again informed the Board that he wished to be licensed, and the Board responded:

> ". . . Please also be informed that you must have one year of residence in Puerto Rico before examination."

Defendants have at no time suggested that plaintiff meets this requirement, or that they can or will license him now despite his failure to comply with the statute. This is a real and immediate controversy, not a conjectural or hypothetical question, and thus is properly before the court for adjudication. *See Golden* v. *Zwickler*, 394 U.S. 103, 108-09 (1969); *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941). We decline to abstain, *Railroad Comm'n* v. *Pullman Co.*, 312 U.S. 496 (1941), because the statute at issue is not one susceptible of state-court interpretation which would allow avoidance of the constitutional questions. *Zwickler* v. *Koota*, 389 U.S. 241, 248-50 (1967); *Flores de Otero* v. *Examining Board, supra.*

The most powerful attack launched upon the statute by plaintiff is the allegation that the classification of would-be engineers on the basis of one-year residence [1] or

---

[1] We have not been informed, nor is it necessary for us now to decide, precisely what "residence" is taken by the Board to mean. In the context of durational residence requirements, residence generally denotes domicile. *The Supreme Court, 1972 Term*, 87 Harv. L. Rev. 1, 67 n. 2 (1973); see, e. g., *Sosna* v. *Iowa*, 419 U.S. 393, 404 (1975).

lack thereof represents a denial of equal protection.[2] Our unraveling of the issues raised by this contention might well begin with *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). Literally read, *Shapiro* could be taken as both the beginning and the end of our inquiry, for it indicates that the stricter variety of equal protection review, requiring the demonstration of a compelling state interest, must be undertaken when a classification "touches on the fundamental right of interstate movement." 394 U.S. at 638. *Shapiro* itself, however, cautions:

> "We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Since requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." 394 U.S. at 638 n. 21.

The tension between these different statements from *Shapiro* understandably created uncertainty as to the amount of impact on interstate travel which would require application of the compelling state interest test. The First Circuit's suggestion that "travel" must be taken to refer only to migration with intent to settle and abide, not to mere interstate movement, *Cole* v. *Housing Authority*, 435 F.2d 807, 810-11 (1st Cir. 1970), was later endorsed by the Supreme Court. *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250, 254-58 (1974). *See also The Supreme Court, 1972 Term*, 87 Harv. L. Rev. 1, 74-75 (1973). Even with this clarification of the *Shapiro* holding, we are left with the thorny question of whether the classification here at issue "operates to penalize those persons . . . who have exercised their constitutional right of interstate migration." *Oregon* v. *Mitchell*, 400 U.S. 112, 238 (1970) (separate of Brennan, White, and Marshall, JJ.); *Memorial Hospital* v. *Maricopa County*, *supra*, 415 U.S. at 258; *Dunn* v. *Blumstein*, 405 U.S. 330, 339-41 (1972). Even this formulation may be considered superseded in some degree by the Supreme Court's recent decision that a state's one-year durational residence requirement for those bringing divorce actions was reasonably justified by the state interests advanced; strict scrutiny was not invoked. *Sosna* v. *Iowa*, 419 U.S. 393, 406 (1975); *id.* at 418-21 (Marshall, J., dissenting).

[2] Plaintiff also makes claims based upon the constitutional guarantee of due process, the privileges and immunities clause, the supremacy clause, and the Universal Declaration of Human Rights.

After carefully examining the justification which the Commonwealth has put forward for the durational residence requirement involved in this controversy, we have concluded that there is no necessity to apply the *Shapiro* line of cases, with all its twists and turns. Even under traditional equal protection theory, the challenged classification can be upheld only if it "has some rational basis and is reasonably related to the promotion of a legitimate state interest." *Massey* v. *Apollonio*, 387 F. Supp. 373, 376 (D. Me. 1974). Discrimination to protect one segment of the population against competition for jobs with another group is not in itself a constitutionally permissible objective, and thus defendants' argument that the durational residence requirement is necessary to prevent high unemployment from becoming even more serious is unavailing. *Flores de Otero* v. *Examining Board*, supra; *In re Griffins*, 413 U.S. 717, 722 n. 8 (1973).

Nor can the court accept the suggestion that the one-year waiting period rationally assists defendants in evaluating the character or other qualifications of applicants. Perhaps it could be shown that some short period of residence in Puerto Rico better permits defendants to adequately scrutinize those they are required by law to evaluate as to suitability, but we agree with the result reached by each federal court of which we are aware

which has addressed this issue with regard to bar admission. The one-year requirement is too tenuously related to the objective of investigation to pass constitutional muster. *Smith* v. *Davis,* 350 F. Supp. 1225 (S.D. W.Va. 1972); *Lipman* v. *Van Zant,* 329 F. Supp. 391 (N.D. Miss. 1971); *Webster* v. *Wofford,* 321 F. Supp. 1259 (N.D. Ga. 1970); *Keenan* v. *Board of Law Examiners,* 317 F. Supp. 1350 (E.D.N.C. 1970); *see Potts* v. *Honorable Justices of the Supreme Court of Hawaii,* 332 F. Supp. 1392 (D. Hawaii 1971). We reject as well the argument that the unique provisions of Article 1483 of the Puerto Rico Civil Code, which imposes upon a contractor liability for damages due to the collapse of a building within ten years of its construction, call for a different result here. The policies underlying the statute come into play only if the durational residence requirement enhances the defendants' capacity to determine either the abilities of applicants or their probable amenability to suit under Article 1483 if a disaster does occur. The one-year requirement is no more related to these judgments by defendants than it is to an applicant's qualifications more generally.

As to the proper form of relief, we do not agree with plaintiff that he must at this point be admitted to examination and licensing as an engineer. Since the defendants have not looked beyond plaintiff's failure to fulfill the one-year residence requirement which we find to be unconstitutional, they must now process his application without regard to that aspect of the statute. Their statutory obligation, however, to examine him as to other qualifications remains unimpaired.

In their final memorandum of law, defendants argue that the challenged statute establishes not one residence requirement, but two separate ones of actual residence and of a year's durational residence. This possible interpretation had somehow escaped the parties' attention theretofore, and as a result we find ourselves unable to

fully adjudicate at this juncture all the issues which it may present. We have considered defendants' contention that we should not consider the challenge to the durational residence requirement since their refusal to admit plaintiff to examination could be justified by reference to the "actual residence" requirement alone. We have not been persuaded. Only the most creative reading of the record could support the conclusion that plaintiff was turned away because of his residence in New Jersey rather than because of his failure to reside for a year in Puerto Rico. It is true that the 1967 rejection of plaintiff's request for examination refers only to the fact that he was not "resident of Puerto Rico" as required by law. The 1972 letter, however, specifically mentions the one-year durational requirement. Nor can we close our eyes to the fact that from the time it was commenced in February, 1973, until defendants filed their final memorandum in April, 1975, this action was litigated on the theory that the durational residence requirement was at issue. Defendants' eleventh-hour suggestion that we read their refusal to examine plaintiff as meaning something that it need not mean and which they have not previously argued it meant must be rejected. Because of our resolution at this issue, we need not consider the validity of defendants' underlying argument that plaintiff, if unambiguously denied examination solely because of his residence outside the Commonwealth, could have challenged the durational residence requirement only after moving to Puerto Rico.

We do not feel that we can proceed any further without assistance from the parties. First, there is some doubt as to whether there will continue to be a real controversy between the parties. Perhaps plaintiff will establish a bona fide residence in Puerto Rico before proceeding with his application for licensing. It is also possible that defendants may interpret the statute to create no residence requirement independent of the durational residence pro-

vision. These uncertainties might justify a refusal on our part to hear any challenge to a residence requirement as a part of this litigation, but we have decided to retain jurisdiction at least for the time being. Plaintiff's pleadings, though inartful and somewhat inconsistent on this issue, are worded broadly enough, in seeking plaintiff's examination, to raise a challenge to a requirement of actual residence. If plaintiff regards the controversy between himself and defendants at an end with the entry of today's judgment, he should so notify the court. If his efforts to obtain a license are hung up on a residence requirement which he objects to on constitutional grounds, this court should be apprised of the facts. Plaintiff will in addition need to submit a memorandum on any legal issues remaining to be decided, since, as we have noted, only defendants' final memorandum has discussed the residence issue. While we do not prejudge the arguments which plaintiff may wish to make, as an aid to helpful briefing of what we see to be potentially important issues we offer this brief overview of the case law relating to residence requirements.

The Supreme Court cases upon which plaintiff principally relies, while striking down durational residence requirements, offer scant support for the proposition that strict scrutiny is appropriate where a requirement of actul residence is challenged. *See, e.g., Dunn* v. *Blumstein, supra,* 405 U.S. at 342 n. 13; *Memorial Hospital* v. *Maricopa County, supra,* 415 U.S. at 252 & n. 3; *The Supreme Court, 1973 Term,* 88 Harv. L. Rev. 13, 114 n. 20 (1974). None of the above-cited cases invalidating durational residence requirements in the context of bar examinations has enjoined use of a residence requirement, *see, e.g., Keenan* v. *Board of Law Examiners,* supra, 317 F. Supp. at 1362 n. 17, and those cases reaching the issue have approved of residence requirements. *Lipman* v. *Van Zant, supra,* 329 F. Supp. at 402-04; *Webster* v. *Wofford, supra,*

321 F. Supp. at 1262. Courts have noted that, at least with regard to admission to the bar, a residence requirement may be rational and in furtherance of legitimate state interests. *See, e.g., Brown* v. *Supreme Court of Virginia,* 359 F. Supp. 549 (E.D. Va.), *aff'd mem.,* 414 U.S. 1034 (1973); *Aronson* v. *Ambrose,* 479 F.2d 75 (3d Cir. 1973).

Judgment on the durational residence requirement will be entered for plaintiff in accordance with the above opinion.

San Juan, Puerto Rico, July 14, 1975.

/s/ Frank M. Coffin
Frank M. Coffin
U. S. Circuit Judge

/s/ Jose V. Toledo
José V. Toledo
U. S. District Judge

/s/ Hernan G. Pesquera
Hernán G. Pesquera
U. S. District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO.

Civil No. 159-73

JOSEPH S. WARD, *Plaintiff*

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, ET AL., *Defendants.*

Plaintiff's Memorandum in Support That It Will Be Unconstitutional To Require Him To Be A Resident of Puerto Rico After He Approved the Examinations in Order To Practice His Profession in Puerto Rico.

TO THE HONORABLE COURT:

(Three Judge Court: Hon. Frank M. Coffin, United States Circuit Judge, Hon. José V. Toledo, Chief United States District Judge, and Hernán G. Pesquera, United States District Judge):

COMES Now the plaintiff in the above-styled case, through his undersigned Counsel, and respectively alleges and prays:

I

STATEMENT OF THE CASE

A.

Partial Judgment and Order of this Court of July 14, 1975.

The plaintiff attacked the unconstitutionality of Section 689 of Title 20 of the Laws of Puerto Rico Annotated, which created the Board of Examiners of Engineers, Architects and Surveyors of the Commonwealth of Puerto Rico, on the ground that it violated the Due Process and Equal Protection Clause of the Fifth Amendment of the Constitution of the United States, on the ground that it

require the plaintiff to reside in Puerto Rico for one year before taking the examinations required to practice Engineering in Puerto Rico.

On July 14, 1975 this Court declared Section 689 of Title 20 of the Laws of Puerto Rico Annotated unconstitutional, and issued the following Partial Judgment and Order:

> "This case having come for a hearing before a Three-Judge Court, Judges Coffin, Toledo and Pesquera sitting, and the issues having been heard and the opinion of the Court having been duly rendered,
>
> It is ORDERED, ADJUDGED and DECREED that Section 689 of Title 20, Laws of Puerto Rico Annotated, is unconstitutional, void and unenforceable to the extent that it establishes a durational residence requirement of one year for those seeking to be licensed as engineers by defendants; and
>
> It is ORDERED, ADJUDGED and DECREED that defendants consider any application for licensing filed by plaintiff Joseph S. Ward without regard to his failure to fulfill the requirement of one year's durational residence contained in Section 689 of Title 20; and
>
> It is ORDERED, ADJUDGED and DECREED that defendants are enjoined from enforcing the durational residence requirement of Section 689; . . ."

B.

Question Raised by the Defendants, But Not Decided by this Court for the Reasons Stated in the Opinion of July 14, 1975.

In its Opinion of July 14, 1975 this Court said:

> "*In their final memorandum of law, defendants argue that the challenged statute establishes not one residence requirement, but two separate ones of actual residence and of a year's durational residence.* This possible interpretation had somehow escaped the parties' attention theretofore, and as a result we find ourselves unable to fully adjudicate at this juncture all the issues which it may present. We have con-

sidered defendants' contention that we should not consider the challenge to the durational residence requirement since their refusal to admit plaintiff to examination could be justified by reference to the 'actual residence' requirement alone. We have not been persuaded. Only the most creative reading of the record could support the conclusion that plaintiff was turned away because of his residence in New Jersey rather than because of his failure to reside for a year in Puerto Rico. It is true that the 1967 rejection of plaintiff's request for examination refers only to the fact that he was not 'resident of Puerto Rico' as required by law. The 1972 letter, however, specifically mentions the one-year durational requirement. Nor can we close our eyes to the fact that from the time it was commenced in February, 1973, until defendants filed their final memorandum in April, 1975, this action was litigated on the theory that the durational residence requirement was at issue. Defendants' eleventh-hour suggestion that we read their refusal to examine plaintiff as meaning something that it need not mean and which they have not previously argued it meant must be rejected. Because of our resolution at this issue, we need not consider the validity of defendants' underlying argument that plaintiff, if unambiguously denied examination solely because of his residence outside the Commonwealth, could have challenged the durational residence requirement only after moving to Puerto Rico." (Emphasis supplied)

C.

Plaintiff's Informative Motion.

On July 26, 1975 the plaintiff filed before this Court the following Informative Motion:

"To the Honorable Court:

(Three-Judge Court):

Comes Now the plaintiff in the above-styled case, through his undersigned Counsel, and respectfully alleges and prays:

1. That the plaintiff received the Opinion of the Court dated July 14, 1975 filed and entered on July 15, 1975 in the above-styled case.

2. That after reading the Opinion, the plaintiff desires to continue his suit in order that the Court may decide the allegations of the defendants that the challenged statute establishes not one residence requirement, but two separate ones of actual residence, and of a year's durational residence.

Wherefore, plaintiff respectfully pray this Honorable Court to grant him thirty (30) days to file a Memorandum to reply defendant's allegations."

That this Court granted said request, having plaintiff up to August 26, 1975 to file before this Court the referred Memorandum, but on such a date August 26, 1975 plaintiff filed before this Court a motion for an extension of time to file said Memorandum, *up to and including September 5, 1975,* which petition was granted by this Court on August 28, 1975.

II.

Unconstitutionality of Any Actual Residence Requirement to Practice Engineering in Puerto Rico.

Although the statute creating the regulation of the practice of Engineering in Puerto Rico does not clearly require an actual residence to authorize the practicing of the science of Engineering in Puerto Rico, such a requirement will be clearly unconstitutional in the light of the Due Process Clause and Equal Protection Clause of the Fifth Amendment [1] of the Constitution of the United States; the Privileges and Immunities Clause of the Fourteenth Amendment,[2] Paragraph 1 of Section 2 of Article

---

[1] The Due Process Clause and Equal Protection Clause of the Fifth Amendment states: . . . No person shall be deprived of its life, liberty, or property, without due process of law.

[2] The Privileges and Immunities Clause of the Fourteenth Amendment, states: . . . "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

IV of the Constitution of the United States,[3] and Article II of the Federal Relations Act.[4]

There is no question that a State, under the Police Power, can require examinations as a condition for the practicing of a profession. But the State cannot require that after a person approve the examinations, he can not practice the profession of engineering in the State, unless he is a resident or is domicile in said State. This requirement will constitute a violation of the constitutional clauses previously mentioned. The practicing of engineering is protected by these constitutional clauses.

In the case of *Blake* v. *McLung*, 172 U.S. pages 239, 251 (1898), when interpreting Article IV, Section 2 of the Constitution of the United States, which provides that the Citizens of each State shall be entitled to all privileges and immunities of citizens in the several states, said:

> "Ward v. Maryland, 12 Wall. 418, 430, involved the validity of a statute of Maryland requiring all traders, not being permanent residents of the State, to take out licenses for the sale of goods, wares or merchandise in Maryland, other than agricultural products and articles there manufactured. This court said: 'Attempt will not be made to define the words 'privileges and immunities,' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of

[3] Paragraph 1 of Section 2 of Article IV of the Constitution of the United States, states: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[4] Article II of the Federal Relations Act, states:

> "The rights, privileges, and immunities of citizens of the United States shall be respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union and subject to the provisions of paragraph 1 of Section 2 of article IV of the Constitution of the United States.

> very comprehensive meaning, but it will be sufficient to say that the clause plainly *and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire personal property, to take and hold real estate, to maintain actions in the courts of the State, and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens. Comprehensive as the power of the States is to lay and collect taxes and excises,' it is nevertheless clear, in the judgment of the court,* that the power cannot be exercised to any extent in a manner forbidden by the Constitution; and inasmuch as the Constitution provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, it follows that the defendant might lawfully sell, or offer or expose for sale, within the district described in the indictment, any goods which the permanent residents of the State might sell, or offer or expose for sale in that district, without being subjected to any higher tax or excise than that exacted by law of such permanent residents." (Emphasis supplied)

As the science of engineering is a universal one, and therefore no local knowledge or condition is necessary for its practice, it constitute a molestation according to the doctrine in the case of *Blake* v. *McLung*, supra, and therefore, a violation of the rights and privileges of a citizen of another State if the laws of Puerto Rico require residence or domicile to a citizen of another State to practice said profession in Puerto Rico.

The situation in plaintiff's case is not that of a law of a State, which require residence to a citizen of another State as a condition to vote, hold office, practice law (See *Chambers Bros.* v. *Joseph Church & Co.*, 14 R.I. 398, 51 Am. Rep. 410 (1884)); act as an insurance agent (See *La Tourette* v. *McMaster*, 248 U.S. 465, 38 S.Ct. 160, L.Ed. 362 (1919).) See also *Corwin*, "THE CONSTITUTION AND

WHAT IT MEANS TODAY", Princeton University Press, 1973 Edition, pages 208 to 210.

IN SUMMARY, the Law of Puerto Rico, if there is such law requirement, requiring permanent residence in the Island in order to practice the science of engineering, is clearly unconstitutional in the light of the constitutional provisions already cited in this Memorandum, as well as in the light of the constitutional doctrine of travel from one State to another. See *Blake* v. *McLung*, supra. The right of travel is recognize by the case of *Ward* v. *Maryland*, cited in *Blake* v. *McLung*, supra, in relation to the exercise of the rights guaranteed by paragraph 1 of Section 2 of Article IV of the Constitution of the United States.

There is no State interest which justifies the Government of Puerto Rico to require permanent residence in Puerto Rico to a citizen of another State to practice the profession of engineering in the Island. The only argument that can be invoked in favor of such requirement is that to protect local engineers from competition of engineers of other countries and States of the Union.

Such an argument was rejected by this Court in plaintiff case, in this Court Opinion dated July 14, 1975, where this Court said:

> *"Discrimination to protect one segment of the population against competition for jobs with another group is not in itself a constitutionally permissible objective, and thus defendants' argument that the durational residence requirement is necessary to prevent high unemployment from becoming even more serious is unavailing. Flores de Otero* v. *Examining Board, supra; In re Griffiths*, 413 U.S. 717, 722 n. 8 (1973)." (Emphasis added)

WHEREFORE, the plaintiff respectfully pray this Honorable Court to declare unconstitutional any actual residence

requirement to permit the plaintiff to practice engineering in Puerto Rico.

RESPECTFULLY SUBMITTED, this 30th day of August, 1975.

DR. SANTOS P. AMADEO
JOSE ENRIQUE AMADEO

By: (Signed) SANTOS P. AMADEO
Dr. Santos P. Amadeo
Counsel for plaintiff Joseph S. Ward.

P.O. Box 21883, University Station,
Río Piedras, Puerto Rico (00928).

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Civil Action No. 159-73

JOSEPH S. WARD, *Plaintiff*

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, ET AL., *Defendants.*

Opinion

COFFIN, *Circuit Judge.* Plaintiff is a resident of New Jersey who desires to be licensed in Puerto Rico as an engineer. Defendants, the members of the Board of Examiners charged with the task of passing upon the qualifications of those seeking such a license, have not examined him because of his failure to comply with the statutory residency requirement for licensure, 20 L. P. R. A. §689. This statute requires residence in the Commonwealth for one year prior to the filing of an application for licensing. This three-judge court was convened to consider plaintiff's contentions that the statute should be enjoined as unconstitutional.

We have previously issued an opinion, and partial judgment, that the durational residency requirement of one year offended the equal protection clause of the Fourteenth Amendment to the Constitution. *Ward* v. *Board of Examiners,* Civ. No. 159-73 (D. P. R. July 15, 1975). In an eleventh hour claim prior to that decision, the defendants raised the contention that the statute, 20 L. P. R. A. § 689, imposes not one, but two residency requirements. The first is an actual, bona fide residence in Puerto Rico, and the second, the durational, one-year requirement. As the issues involved in the bona fide residency requirement had

not been adequately briefed by the parties, we requested additional briefs on that subject, and proceeded to decide the durational residency requirement alone.[1] At this juncture, the sole issue before us is the constitutionality of the actual, bona fide residency requirement under the Fourteenth Amendment.

The statute does create two classes of applicants for licensing as engineers in the Commonwealth of Puerto Rico: (1) persons residing in Puerto Rico at the time of application to the Board of Examiners and (2) those who are residing elsewhere. It is basic law, however, that all classifications do not offend the equal protection clause of the Fourteenth Amendment. *Railway Express Agency* v. *New York,* 336 U. S. 106 (1949).[2] Under the traditional test, a classification is permissible under the equal protection clause if it is rationally related to the purpose of the statute in which it is contained. *Dandrige* v. *Williams,* 397 U. S. 471, 485 (1970). Some classifications, because they isolate a suspect class, or because they infringe upon a fundamental right are more rigorously examined. These classifications are permitted only if they serve a compelling state interest. *Dunn* v. *Blumstein,* 405 U. S. 330, 335 (1972). As we cannot say that residency is a suspect classification,

---

[1] The defendants claimed that the plaintiff lacked standing to challenge the durational residency requirement because he did not satisfy the actual residence requirement. In our earlier opinion we stated that "(o)nly the most creative reading of the record could support the conclusion that plaintiff was turned away because of his residency in New Jersey rather than because of his failure to reside for a year in Puerto Rico." As the letter denying plaintiff licensing had specifically mentioned the durational residency requirement, we concluded that plaintiff had standing to contest that portion of the statute.

[2] Plaintiff also makes an argument based on the privileges and immunities clause of the Fourteenth Amendment. It has been found, however, that residency requirements for licensing in professions in which the public has an interest do not offend this clause. *La Tourette* v. *McMaster,* 248 U.S. 465 (1919) (insurance brokers).

or that the actual residency requirement burdens a fundamental right,[3] we find that the classification before us does not call for a strict standard of review. *Costa* v. *Bluegrass Turf Services, Inc.*, 44 U. S. L. W. 2293-94 (D. E. Ky. Nov. 24, 1975). Therefore, we need only to find that a legitimate state purpose, rationally related to the licensing of qualified engineers, is served by actual residency to find the classification permissible under the equal protection clause.

The Board of Examiners, and the amicus curia, Colegio de Ingenieros, Arquitectos y Agrimensores de Puerto Rico, advance several purposes for the residency requirement. The first, to "save the work" on an island plagued by high unemployment, is not a permissible governmental purpose *See Flores de Otero* v. *Examining Board*, No. 917-13 (D. P. R. Dec. 19, 1974), *prob. juris. noted*, 43 U. S. L.W. 3624 (1975). The Colegio, however also places reliance on the state interest in facilitating evaluation of application for engineers' licenses. The residency requirement assists the Board of Examiners, which is composed of active professionals and which operates on a limited budget, to efficiently pass upon the ability and moral character of an applicant. Several courts have sustained actual residency requirements for admission to the bar on similar reasoning. *Lipman* v. *Van Zant*, 329 F.Supp. 391, 403 (N. D. Miss. 1971); *Webster* v. *Wofford*, 321 F.Supp. 1259, 1262 (N. D. Ga. 1970). While, as the Colegio concedes,

[3] It is unsettled whether classifications which impinge upon the constitutional right to interstate travel require a strict standard of review. *See The Supreme Court-Foreword*, 88 Harv. L. Rev. 13, 114 (1974). In any event, we do not view actual residency requirements as impinging on the right to travel. The line of cases which have invalidated durational residency requirements have used travel in a special sense, "migration with the intent to settle and abide". *Cole* v. *Housing Authority*, 435 F.2d 807 (1st Cir. 1970), approved in *Memorial Hospital* v. *Maricopa County*, (415 U.S. 250 (1974)). Actual residency requirements are not inimical to travel in this special sense.

sufficient information about an applicant might be forthcoming from mail and telephone inquiries, we cannot say that residency does not serve a rational state purpose in evaluating the applications for engineer's licenses.[4] Consequently, 20 L. P. R. A. §689, insofar as it imposes a requirement of actual residency does not offend the equal protection clause of the Fourteenth Amendment.

Judgment on the actual residency requirement will be entered for defendants in accordance with the above opinion.

(Received and filed Feb. 12, 928 AM '76)

/s/ Frank M. Coffin
U. S. Circuit Judge

/s/ José V. Toledo
U. S. District Judge

/s/ Hernán G. Pesquera
U. S. District Judge

[4] The Board asserts that Article 1483 of the Puerto Rico Civil Code which imposes liability on the contractor if the building collapses within ten years of its completion also supports the residency requirement. This statute, part of the historic civil law regulation of professional engineers, is designed to insure that the highest standards are followed by the members of the engineering profession, and to protect the public from defalcations in that duty. An engineer who has shown some disposition to reside in Puerto Rico might reasonably be expected to be available for service of process within the limitations period, while one who has never resided on that island must be reached, if at all, through a long arm statute. However, in light of our findings, we do not need to rely on this purpose.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Civil No. 159-73

JOSEPH S. WARD,
Plaintiff

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, ET AL.,
Defendants.

Judgment

This Court having come for a final hearing before a three-Judge Court, Judges Coffin, Toledo and Pesquera sittings and the issues having been heard and the opinion of the Court having been duly rendered

it is ORDERED, ADJUDGED AND DECREED that section 689 of 20 laws of Puerto Rico annotated, insofar as it imposes a requirement of actual residency does not offend the equal protection clause of the Fourteenth Amendment.

So ORDERED

San Juan, Puerto Rico this 8th day of March, 1976.

DENNIS A. SIMONPIETRI
Clerk

By: (Signed) RAMÓN A. ALFARO
Ramón A. Alfaro
Chief Deputy Clerk.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

Civil No. 159-73

JOSEPH S. WARD,
Plaintiff

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, ET AL.,
Defendants.

Notice of Appeal

TO THE HONORABLE COURT:

NOTICE is hereby given that plaintiff Joseph S. Ward, hereby appeal to the Supreme Court of the United States from the final Judgment entered in this action on March 8, 1976, sustaining the constitutionality of Section 689 of 20 LPRA.

This appeal is taken pursuant to 28 USC 1253. San Juan, Puerto Rico, this 29th day of April, 1976.

(Signed) Santos P. Amadeo
DR. SANTOS P. AMADEO
Counsel for plaintiff
Joseph S. Ward.
P.O. Box 21883, University Station,
Río Piedras, Puerto Rico (00931).
tel. 763-8075 or 763-5130.

CERTIFICATE OF SERVICE

I Do Hereby Certify that on this same date a true copy of the foregoing Notice of Appeal have been forwarded to Hon. José Acosta Grubb, Attorney of Department of Justice, Counsel for defendants, at his address: General Litigation Division, Department of Justice, P.O. Box 192, San Juan, Puerto Rico (00901).

I do also certify that a true copy of this Notice of Appeal have been forwarded, to the Clerk of the Supreme Court of the United States, at Washington, D.C. U.S.A.

San Juan, Puerto Rico, this 29th day of April, 1976.

(Signed) Santos P. Amadeo
Dr. Santos P. Amadeo

APPENDIX F

§ 689. Qualifications for registration in the Board's Registry.

As minimum evidence, satisfactory to the Board, to show that the applicant meets the qualifications for registration as licensed engineer, architect or surveyor, or for his certification as graduate engineer or architect, the Board shall accept, as the case may be:

(1) For graduate engineer or architect:

(a) Graduation and examination. Graduation from course or curriculum of engineering or architecture, of a duration of not less than four academic years or its equivalent, whose efficacy has been adequately verified, in any university, college or institute whose standing and degree of proficiency are accepted by the Board, and the passing of written examinations (validation) on the fundamental subjects of engineering or architecture.

(2) For licensed engineer or architect:

(a) Graduation, examination and minimum experience. A certification accrediting his graduation from a course or curriculum of engineering or architecture, of a duration of not less than four (4) academic years or its equivalent, whose efficacy has been adequately verified, in any university, college or institute whose standing and proficiency are accepted by the Board; passing of written examinations (validation) on the fundamental subjects of engineering or architecture; and detailed history of his professional experience of not less than four years, acquired after his graduation as a professional, satisfactory to the Board, and showing, in the judgment of the Board, that the applicant is qualified to practice as engineer or architect with a degree of professional responsibility which justifies his licensing. Every professional who has met the requisites required to be licensed as a graduate pro-

fessional shall be relieved from the presentation of the evidence which, for such purpose, may already be in the possession of the Board, including the passing of the examinations given by the Board when he was authorized as a graduate engineer, as provided in subdivision (1) (a) of this section. The Board may, in its discretion, consider as devoted to acquire experience, all or part of the time devoted to teaching or of higher studies of a professional nature after graduating as engineer or architect. In case the evidence submitted in the application with respect to the experience does not appear conclusive to the Board, or does not, in the opinion thereof, show the existence of sufficient guarantee and justification for the licensing, the applicant may be required to submit additional evidence on any particular thereof.

(3) For licensed surveyor:

(a) Studies, experience and examination. Certification showing that the applicant has passed a course or curriculum in engineering lasting not less than two years, or has completed the studies in surveying, the sufficiency of which has been duly ascertained and accepted by the Board; a detailed statement of at least two years' professional experience, satisfactory to the Board, and showing, in the judgment thereof, that the applicant is qualified for the practice of surveying; and passing of written examinations (validation) on the fundamental subjects of surveying.

In addition to what has already been provided in this section, it shall be required that applicants for registration in the Board's registry be citizens of the United States of America and reside in the Commonwealth of Puerto Rico for not less than one year before filing their applications. Provided, that the requisite of being a citizen of the United States of America shall not apply to engineers, architects and surveyors who have studied the total

courses and have received their corresponding grade or certificate in the Commonwealth of Puerto Rico provided that the approved course of study and institution where he has studied fulfill the qualifications fixed by sections 681-710 of this title, as the case may be; Provided, That the applicants shall meet all the qualifications fixed by this act for registration in the Board's registry.

The requisites of residence and United States citizenship shall not apply to engineers, architects or surveyors whom the different agencies or instrumentalities of the Government of the Commonwealth, the municipal governments and the public corporations employ or may wish to employ, it being understood that it shall not be necessary that the applicants be so employed at the time of their application or registration in the Board's registry. The applicants shall meet all the other qualifications fixed by sections 681-710 of this title for registration in the Board's registry.

Upon compliance with these requirements by a noncitizen of the United States of America, the board shall issue a conditional certificate as graduate engineer, architect or surveyor, as the case may be, valid for the practicing of such professions only in the performance of this employment and during the time they are employed by the abovementioned public entities. The Board shall be empowered to establish special standards relative to the conduct, transfer of employment and absence from the Commonwealth of such certified or licensed persons, it being understood that the professional acts of said engineers, architects and surveyors shall have the same legal effects and shall be subject to the duties and laws of the Commonwealth in the same manner as the acts of the professionals registered in the Board's registry.

Any engineer, architect or surveyor holding a conditional license or graduate engineer or architect with a condi-

tional certificate who obtains the citizenship of the United States of America shall be entitled to apply for registration and be registered in the Board's registry as a graduate engineer or architect, or a licensed engineer or architect, or a licensed surveyor, as the case may be, in accordance with all the other requirements of the Board. Amended June 9, 1964, No. 119, p. 380, § 1, eff. June 29, 1964; June 8, 1967, No. 121, p. 368, § 1, eff. June 8, 1967.

Supreme Court, U. S.
FILED
JUL 28 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1768

JOSEPH S. WARD, *Appellant,*

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, COMPOSED OF ITS PRESIDENT, GUILLERMO CRUZ GONZALEZ, ITS VICE-PRESIDENT JUAN M. PORTELA SOLER, AND ASSOCIATE MEMBERS PEDRO SANTIAGO RIVERA, MILTON CASTRO, GUSTAVO PADILLA, AND GENARO NEGRON, *Appellee.*

On Appeal from the United States District Court for the District of Puerto Rico (Three-Judge-Court)

MOTION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1768

JOSEPH S. WARD, *Appellant*,

v.

BOARD OF EXAMINERS OF ENGINEERS, ARCHITECTS AND SURVEYORS OF THE COMMONWEALTH OF PUERTO RICO, COMPOSED OF ITS PRESIDENT, GUILLERMO CRUZ GONZALEZ, ITS VICE-PRESIDENT JUAN M. PORTELA SOLER, AND ASSOCIATE MEMBERS PEDRO SANTIAGO RIVERA, MILTON CASTRO, GUSTAVO PADILLA, AND GENARO NEGRON, *Appellee*.

On Appeal from the United States District Court for the District of Puerto Rico (Three-Judge-Court)

MOTION TO DISMISS OR AFFIRM

Appellee in the above case moves this Honorable Court to dismiss the appeal herein on the grounds hereinafter set forth, or in the alternative to affirm the judgment sought to be reviewed on appeal upon the grounds that it is manifest that the questions upon which the decision of this case rests are so unsubstan-

tial as not to need further argument, and/or the judgment rests on adequate statutory and constitutional principles.

STATEMENT OF THE CASE

Joseph S. Ward, appellant herein, and a resident of New Jersey, filed on February 22, 1973 a complaint for declaratory judgment and injunctive relief under the provisions of Title 42 United States Code, Section 1983, and 28 United States Code, Section 1343. In said complaint appellant alleged, *inter alia,* that section 689(3)(a)[1] of Title 20, Laws of Puerto Rico Annotated violates the due process clause of the Fifth Amendment to the Constitution of the United States insofar as it conditions examination and licensing of an engineer to one year residence in the Commonwealth of Puerto Rico prior to examination.

On November 11, 1974, a Three-Judge-Court was convened, and on July 15, 1975 a Partial Judgment and Opinion was filed and entered holding that the durational residence requirement of one year offended the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. *Ward* v. *Board of Examiners, et al.,* Civil Number 159-73 (D.P.R. July 15, 1975).

The Court below retained jurisdiction in the case at bar to hear the parties on the issue of whether the requirement of actual bona-fide residence offended the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

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[1] The statute, 20 L.P.R.A. § 689, can be found at Appendix F, and is officially reported at pages 226 to 228 of the 1973 Supplement to Volume 4A, Title 20 of the Laws of Puerto Rico Annotated.

On February 12, 1976 a ruling was delivered by the Three-Judge-Court upholding the constitutionality of Section 689 of Title 20 of the Laws of Puerto Rico Annotated insofar as it imposes a requirement of actual bona-fide residence which does not offend the Equal Protection Clause of the Fourteenth Amendment, and on March 15, 1976 judgment was entered accordingly.

On April 29, 1976 appellant filed Notice of Appeal and on June 4, 1976 he filed his Jurisdictional Statement before this Honorable Court.

SUMMARY OF ARGUMENT

I

THE JUDGMENT OF THE STATUTORY THREE-JUDGE-COURT BELOW RESTS UPON PROPER AND ADEQUATE STATUTORY AND CONSTITUTIONAL GROUNDS AND/OR NO SUBSTANTIAL QUESTION IS PRESENTED FOR REVIEW BY THIS HONORABLE COURT.

A.—Power of the State To Regulate the Practice of Professions

It is a well-established principle that the State has the power to regulate the practice of professions and to enforce standards of conduct within its borders.

It follows that a statute or state regulation that has real relation to the suitable protection of the people of the State and is reasonable in its requirements is not invalid though it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to this constitutional authority. *Standard Stocks Toal Co.* v. *Wright,* 225 U.S. 540.

We are before a case where no federal statute is involved, where no intervention with interstate com-

merce is at issue, and in which only the police power of the State to regulate the practice of engineering is questioned. This power to regulate is not only clearly within the scope of a state police power, but also the actual bonafide residence requirement for obtaining a license to practice such profession is reasonable by any standards.

On the other hand, it is also clearly established that no one has a natural, absolute or vested right to practice a profession, and such a right is not included within the privileges and immunities of national citizenship. *Reetz* v. *Michigan,* 188 U.S. 505, 47 L.Ed. 563, 23 S.Ct. 390.

The most universal as well as the most important of all statutory regulations of the practice of any profession is that which requires every person who desires to practice a profession to obtain a license to do so, issued by or under the sponsorship of the State, after a prescribed showing by the applicant of his qualifications to engage in such practice.

This governmental power to legislate on what the State feels is reasonably necessary to protect the interests of the public was upheld in the case of *North Dakota State Board of Pharmacy* v. *Snyder's Drug Stores, Inc.,* decided on December 5, 1975, 42 L.W. 4035, relative to a pharmacy operating license denied to an applicant who is not a registered pharmacist in good standing. Citing with approval the case of *Ferguson* v. *Skrupa,* 372 U.S. 726, where the constitutionality of a state law prohibiting persons other than lawyers from engaging in the business of debt adjusting and debt pooling, this Honorable Court expressed as follows:

"We conclude that the Kansas Legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. Unquestionably, there are arguments showing that the business of debt adjusting has social utility, but such arguments are properly addressed to the legislature, not to us. We refuse to sit as a 'Superlegislature to weigh the wisdom of legislation', and we emphatically refuse to go back to the time when courts used the Due Process Clause 'to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought.' Nor are we able or willing to draw lines by calling a law 'prohibitory' or 'regulatory'. Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours. The Kansas debt adjusting statute may be wise or unwise. But relief, if any be needed, lies not with us but with the body constituted to pass laws for the State of Kansas."

Thus, the Commonwealth of Puerto Rico, through its instrumentality, the Board of Examiners of Engineers, Architects and Surveyors, appellee herein, has the power to regulate the practice of engineering, and this power includes the power to require engineers to obtain licenses as a condition of engaging in such practice. *Sember* v. *Oregon State Dental Examiners,* 294 U.S. 608.

B.—The Classification under the Statute Serves a Rationally Legitimate State Purpose

As submitted hereinabove, the State has the power to regulate the practice of professions and to enforce standards of conduct within its border.

The statute under constitutional attack in the case at bar has real relation to the suitable protection of the practice of the profession, in that it assists the Board of Examiners to efficiently pass upon the ability and moral character of an applicant, specifically considering that engineers, architects and surveyors play a major role in the industrial and economic expansion in the Commonwealth of Puerto Rico.

As a matter of fact, several courts have sustained actual residency requirement for admission to the Bar on similar reasoning. *Lipman* v. *Van Zant,* 329 F.Supp. 391, 403 (N.D. Miss. 1971); *Webster* v. *Woffard,* 321 F.Supp. 1259, 1262 (N.D. Ga. 1970).

It thus follows that actual residency does serve a rationally legitimate state purpose in evaluating the applications for engineers' licenses and in safeguarding the interests of the People of Puerto Rico.

C.—The Classification under the Statute Does Not Offend the Equal Protection Clause

In *Williams* v. *Rhodes,* 393 U.S. 23, 21 L.E.2d 241, this Honorable Court established that upon deciding if a law violates the equal protection clause, three essential elements should be considered: (a) the nature of the classification involved; (b) the individual interest affected by the classification; and (c) the alleged interest of the government on behalf of the classification.

We have already analyzed the interest of the government on behalf of the classification, and we respectfully submit that there is no individual interest affected by it. Therefore, we shall analyze only the nature of the classification involved.

At the outset, we are not dealing with a suspect classification based on alienage like in the case of *In Re Griffiths,* 413 U.S. 717 (1973), 37 L.Ed.2d 910. There this Honorable Court held that no discrimination should be exercised against the right to engage in the practice of law or any other lucrative profession. See also *Examining Board of Engineers, Architects and Surveyors* v. *Flores de Otero,* Opinion delivered by this Honorable Court on June 17, 1976, 44 L.W. 4890. *Arias* v. *Examining Board of Refrig. & Air Cond. Technicians,* 353 F.Supp. 857 (D.P.R. 1972).

We are not dealing herein either with the durational residency requirement of one year which the Three-Judge-Court below held offended the equal protection clause of the Fourteenth Amendment. *Ward* v. *Board of Examiners, etc., supra.*

In this connection the case of *Mercer* v. *Hemmings,* 194 So.2d 579 (1967) cited by appellant,[2] and where the Florida Supreme Court declared unconstitutional a statute requiring an applicant to practice in Florida the profession of Accountant, *two years* of residency before taking the examinations, is completely inapposite to the case at bar.

The sole issue involved in the case at bar is the constitutionality of the actual, bona fide residency requirement which the courts have recognized is not subjected to the strict compelling governmental interest equal protection test, but which is to be judicially scrutinized under the rational basis equal protection standard. See *Costa* v. *Bluegrass Turf Service, Inc.,* U.S. D.C. Ky (Three-Judge-Court), Per Curiam Opinion of November 24, 1975, 44 L.W. 2293-2294.

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[2] Page 6 of appellants' brief.

The classification created by the statute under constitutional attack, being rationally related to the suitable protection of the people of Puerto Rico and to the adequate evaluation by the Board of Examiners of applicants' moral character and educational preparation, is permissible under the equal protection clause. *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970).

D.—Section 689(3)(c) of Title 20 Laws of Puerto Rico Annotated Does Not Abridge Any Rights, Privilege or Immunities under the Provisions of Section 2 of Article IV of the Constitution of the United States

Appellant admits that a State, under its police power can require examinations as a condition for the practice of a profession, but alleges that it cannot require that in order to take such examinations the applicant must be an actual, bona-fide resident of the Commonwealth of Puerto Rico. In support of his contention appellant cites from the case of *Ward* v. *Maryland,* 12 Wall. 418 mentioned in the case of *Blake* v. *McLung,* 172 U.S. 239, both of which are not in point with the issue herein involved.

In the first place, *Ward* v. *Maryland, supra,* refers to a statute requiring traders not being *permanent residents* of the State, to take out licenses for the sale of goods, wares or merchandises. In the case at bar the statute involved plainly and simply requires actual bona-fide residency at the time of taking the examinations as a requisite for obtaining the license to practice as engineers, architects or surveyors.

Secondly, the statute under constitutional attack is not encroaching into any citizen's right to pass into any other state of the Union for the purpose of engaging in lawful commerce, trade or business without molestation.

In *Blake, supra,* the statute dealt with a highly discriminatory practice in which creditors residents of the State had a priority in the distribution of assets in the payment of debts over creditors residents of other countries. Obviously, such discrimination, totally unrelated to any useful and needful governmental purpose, is repugnant to the Rights, Privileges and Immunities Constitutional Clause under Section 2 of Article IV of the Constitution of the United States.

Now, in analyzing the meaning of the words privileges and immunities this Honorable Court made it very clear in *Blake, supra,* that it is safer and more in accordance with the duty of a judicial tribunal to leave said meaning to be determined in each case upon a view of the particular rights asserted and denied therein, subject, of course, to such restraints as the government may justly prescribe for the general good of the whole. As this Honorable Court expressed therein at page 254:

> "We must not be understood as saying that a citizen of one state is entitled to enjoy in another State every privilege that may be given in the latter to its own citizens. These are privileges that may be accorded by a State to its own people in which citizens of other States may not participate except in conformity to such reasonable regulations as may be established by the State. For instance, a State cannot forbid citizens of other States from suing in its courts, that right being enjoyed by its own people, but it may require a non-resident although a citizen of another State, to give bond for costs, although such bond be not required of a resident. Such regulation of the in-

ternal affairs of a State cannot reasonably be characterized as hostile to the fundamental rights of citizens of other States. So, a State may, by rule uniform in its operation as to citizens of the several States, require *residence* within its limits for a given time before a citizen of another state who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. It has never been supposed that regulations of that character materially interfered with the enjoyment by citizens of each state of the privileges and immunities secured by the Constitution to citizens of the several states. . ."

See also *La Tourette* v. *McMaster, Insurance Comm. of the State of South Carolina,* 248 U.S. 465 (1919), where this Honorable Court construed a statute providing that only such persons shall be licensed to act as brokers to represent citizens for the placing of insurance, as are residents of the State, as requiring *local residence,* as distinguished from citizenship. Such statute was held within the police power and therefore not depriving such citizen and resident of another state of liberty or property, in violation of the Fourteenth Amendment, or discriminating against him in violation of Section 2, Article IV of the Constitution of the United States.

In other words, what the Constitutional Clause clearly pursues is to preclude a state from regulating business or professions by giving its own citizens *essential* privileges denied to citizens of other states. But through the statute in the case at bar, the government is simply exercising its legitimate police power of regulating the requirements of all applicants to obtain a license to practice a profession.

E.—The Decision of the Court Below Was Clearly Correct

Obviously, the Court below, in delivering its ruling upholding the constitutionality of the actual bona-fide residence requirement, considered that the controversy in the case at bar is set in the context of efforts of the government of the Commonwealth of Puerto Rico equitably and lawfully to properly and adequately pass upon the ability and moral character of an applicant. This being a valid interest, the appropriate test to be used is that of a rationale basis for the legislation. *Dandridge* v. *Williams, supra.*

It should be emphasized that the cases have directed their constitutional attack at durational residency requirements exclusively without implying any view of the validity of the residency requirement itself. *Shapiro* v. *Thompson,* 394 U.S. 618. In fact, the right of the States to require residency in order to determine the eligibility to obtain a license to practice a profession, or to determine the eligibility to obtain any other right or privilege, for that matter, has been left untouched and, as a matter of fact, has been upheld. *Smith* v. *Davis,* 330 F.Supp. 1225, *Webster* v. *Wofford, supra, Lipman* v. *Van Zant, supra.*

In *Lipman,* as in the case at bar, the Court invalidated that portion of the statute which required residency for a period of one year preceding the date of the application, but it upheld the constitutionality of the statute's requirement for residency at date of application.

The important factor in this line of decisions is that the courts have distinguished, just as this Honorable Court has done in *Shapiro* v. *Thompson,*[3] *supra, Dunn*

[3] At 638, Note 21: "We imply no view on the validity of waiting period or residence requirements determining eligibility to vote,

v. *Blunstein,* 405 U.S. 330, and *Memorial Hospital* v. *Maricopa Country,* 415 U.S. 250 (1974), between durational residency requirements and the bona-fide residency requirements which the statute may impose, and the different treatment and result which follows from the distinction.

CONCLUSION

The constitutional attack made by appellant to Section 689(3)(a) of Title 20, Laws of Puerto Rico Annotated is totally unsubstantial because obviously it has no merits. *Ex parte Poresky,* 290 U.S. 30, 54 S.Ct. 3, 78 L.Ed. 152 (1933).

WHEREFORE, appellee respectfully submits that the appeal in this case should be dismissed, or in the alternative, the judgment of the Court below should be affirmed.

In San Juan, Puerto Rico, this 28th day of July, 1976.

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eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interest on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel."